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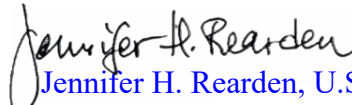
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May 14, 2024

By Tuesday, May 21, 2024, Defendant shall respond to Plaintiff's letter.

Hon. Jennifer H. Rearden
Daniel Patrick Moynihan
United States Courthouse
Chambers 1010
500 Pearl St.
New York, NY 10007-1312

SO ORDERED.


Jennifer H. Rearden, U.S.D.J.

Dated: May 16, 2024

Re: Kintetsu World Express (U.S.A.), Inc.
v. Dialectic Distribution LLC
SDNY Docket No. 1:21-CV- 09579 (JHR)(JW)
KLSE File: 6405

Dear Judge Rearden:

We represent the Plaintiff, Kintetsu World Express (U.S.A.), Inc. ("Kintetsu"), in this action. We write in accordance with your Individual Rule 3(C) to address a discovery issue and request an informal conference with the Court pursuant to Local Civil Rule 37.2. We have written repeatedly to opposing counsel and engaged in good faith telephone discussion of the relevant issue without resolution.

In this action, plaintiff asserts claims for approximately \$1.6 million in damages arising from defendant's non-payment of charges for air transport and related logistics services provided by plaintiff.

The issue at hand is defendant's failure to respond to or produce witnesses in compliance with plaintiff's notices to take depositions of the defendant pursuant to F.R.Civ.P. 30(b)(6) and of

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four key individuals employed by defendant. We served plaintiff's notices on January 30. Defendant has served neither a designation in response to the Rule 30(b)(6) notice nor objections to the individual notices served. We have followed up in writing with opposing counsel regarding plaintiff's notices four times and, as required by your Individual Rule, we have also telephoned opposing counsel and discussed the need promptly to schedule these depositions.

The noticed individuals are Jennifer DeLorenzo, Owen Green, Mark Hoehnes, and Zachary Zeltzer. Based on documents produced, Ms. DeLorenzo is responsible for dealing with defendant's accounts payable, including those owed to the plaintiff, receiving plaintiff's invoices, processing them for payment, and arranging wire transfer remittances. Mr. Green appears to be defendant's operations manager, and dealt with plaintiff in arranging for plaintiff's services and responding to inquiries about shipments in progress. Mr. Hoehnes is defendant's chief financial officer and participated in correspondence and meetings relating to the Payment Agreement pursuant to which the parties attempted to resolve their differences prior to the institution of this action. Mr. Zeltzer is defendant's principal and appears to have arranged the purchases and sales of the products plaintiff transported, dealt directly with some of plaintiff's suppliers in arranging defendant's shipments of its goods and participated in negotiation of the Payment Agreement. Depositions of these witnesses are critical both to proof of plaintiff's claims and to defense of the counterclaims.

During our recent telephone call with opposing counsel, I raised the matter of defendant's non-responsiveness to plaintiff's Rule 30(b)(6) notice to take his client's deposition and the

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individual notices for his client's employees. He indicated that Mr. Green and Mr. Zeltzer were generally available and asked whether they could be deposed by remote means; I expressed a preference for in-person testimony. He then advised that Green could be made available in New Jersey, but that Mr. Zeltzer is now in Puerto Rico. Upon my enquiry, he stated that Zeltzer does travel to the New York area on occasion, and I asked that he determine when Mr. Zeltzer will next be in the New York area so that we could determine if a remote deposition would be necessary. I further indicated that I was prepared to begin taking depositions of these individuals as early as last Wednesday, May 8, and asked that he provide proposed dates for testimony. Despite multiple written requests and the telephone discussion, we have had no effective response, and the depositions remain unscheduled.

For these reasons, we respectfully request that the Court schedule an informal conference to resolve these issues.

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Should the Court have any questions or desire further information, we are at the Court's disposal to respond. Counsel and the parties thank the Court for its consideration.

Respectfully submitted,

KENNEDY LILLIS SCHMIDT & ENGLISH

By: 

Charles E. Schmidt

CES/

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cc: *Via ECF*

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